



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Bill No:	SB 557	Date Amended	07/28/04
Author:	Kuehl	Tax:	Timber Products Tax
Related Bills:			

BILL SUMMARY

This bill would impose an excise tax at a rate of one-cent per board foot on distributors or purchasers of timber products. Among other things, the tax would provide funding for the administration and review of timber harvest plans.

Summary of Amendments

Since the previous analysis, amendments removed the provisions requiring the Legislative Analyst Office to report on and recommend options for collecting a fee imposed on consumers of timber products. New provisions were added imposing a tax on distributors or purchasers of timber products at a rate of two cents per board foot. The most recent amendments made technical changes suggested by Board staff to accommodate administration by the Board, and changed the rate of tax to one-cent per board foot.

ANALYSIS

Current Law

Under existing law, Section 38115 of the Revenue and Taxation Code imposes a timber yield tax on the following:

- Every timber owner who harvests his or her timber or causes it to be harvested, and
- Every timber owner of felled or downed timber who acquires title to such felled or downed timber in this state from an exempt person or agency, as described, and
- Every person who, without authorization, intentionally or unintentionally harvests or causes to be harvested timber owned by another.

The timber yield tax rate is currently set at 2.9 percent. The amount of tax is calculated according to the volume of timber harvested, the established value for the species harvested, and the tax rate.

The timber yield tax is collected by the Board and deposited the Timber Tax Fund. After administrative costs are deducted, remaining revenues are returned to local agencies, as specified.

Proposed Law

This bill would add Article 10 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code to impose on and after July 1, 2005, a tax on a distributor or purchaser of timber products at the time the distributor or purchaser

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acquires title to and possession of a timber product. The tax would be one-cent (\$0.01) per board foot imposed on lumber and related products.

This bill would define the term “timber product” to mean a product in which wood or wood fiber is a principal component part, including, but not limited to, a solid sawn board, an engineered wood product, or a nonuniform solid wood product. The term would not include a product that has been manufactured out of wood, such as a piece of furniture. The term “distributor” would be defined to mean a person who acquires title to and possession of a timber product for the purpose of selling that timber product at retail. The term “purchaser” would be defined to mean a person who acquires title to and possession of a timber product for storage, use, or other consumption under either of the following:

- A transaction subject to use tax.
- For the purpose of incorporating the timber product into a manufactured article that no longer meets the definition of a timber product.

The taxpayer would be required to file a return and remit the tax to the Board on a quarterly basis. Returns and payments would be due on or before the 25th day of the calendar month following each quarterly period for which the tax is due.

The Board would transmit the payment to the Timber Harvest Review, Fire Protection, and Forest Restoration Account, which this bill would create. Money in the fund would be spent for the following purposes:

- To pay for Board administrative costs for administering, collecting, auditing, and making refunds associated with the administration of the tax program.
- To pay refunds.
- To administer and review operations directly connected with the review of timber harvesting plans of a department, board, or commission that reviews timber harvesting (Department of Forestry and Fire Protection, Department of Fish and Game, Department of Conservation, and certain California regional water quality control boards).
- For transfer to the Forest Resources Improvement Fund with the Department of Forestry and Fire Protection.

To provide grants to local agencies responsible for fire protection and to voluntary associations to undertake hazardous fuel reduction projects on forest lands to reduce the costs of wildland fire suppression, improve forest health, and protect homes and communities.

The Board would administer the tax in accordance with the Fee Collection Procedures Law, which contains “generic” administrative provisions for the administration and collection of fee programs to be administered by the Board.

Background

The basic requirement of the Forest Practice Act is that timber harvest operations comply with a permit, called a “Timber Harvest Plan” that has been prepared by a registered professional forester. Timber harvest plans (THPs) are reviewed by a variety of state agencies, including the California Department of Forestry and Fire Protection, Departments of Conservation, Fish and Game, and the State Water Resources Control

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Board, at a general fund cost of approximately \$22.1 million annually according to the Legislative Analyst's Office (LAO). The costs of timber harvest review have historically been completely absorbed by the state.

The LAO has advocated that timber harvest review costs be entirely covered by timber operators. As that agency stated in its 2003-04 Budget Analysis: "There is a direct link between the THP review and enforcement and those who directly benefit from it through their harvesting of timber. In other words, without the state review and approval of the THP, businesses would not be able to harvest timber. Doing so would be consistent with the Legislature's actions in requiring the costs of most other environmental regulatory programs, such as those protecting air and water quality, to be fully or partially reimbursed through industry fees and assessments."

The LAO reviewed a number of potential ways that fees could be structured to recover state agency costs related to THPs, which include the following:

- **Per Acre Fee.** Timber operators would pay a fee based on the number of acres proposed to be harvested in the submitted THP, without regard to the value of the proposed harvest. Under this option, fees could be structured with a sliding scale so that above a certain minimum number of acres, the cost per acre could be reduced. The fees would be payable to CDFFP upon submission of a THP.
- **A Flat Fee Per THP.** Timber operators would pay a flat fee for each THP submitted to CDFFP, without regard to the value of the proposed harvest. The fees would be payable to CDFFP upon submission of a THP.
- **A Fee for Service Basis.** A fee would be assessed based on the costs of state agencies related to reviewing a particular THP. Under this option, THPs requiring more state agency review time would be assessed a higher fee. A fee would be collected at the conclusion of the review process.
- **A Timber Yield Fee.** Timber operators would pay a fee based on the value of timber that is harvested. Such a fee could be collected using the existing timber tax collection system in which timber owners are required to report each quarter the value of timber harvested to the Board for payment of timber yield taxes, based on the value of the harvested timber.

Of the various potential fee mechanisms, the LAO's preferred fee structure would be a timber yield fee. This is because unlike the first three options, the timber yield fee would be directly proportional to the monetary gain from the harvest. This addresses concerns with the flat fee that all timber operators would pay the same regardless of the value harvested. Similarly, there is a concern that under a per acre fee, timber operators submitting the same size THP, but which represent different harvest values, would pay the same fee. It was also found that a timber yield fee is preferable because unlike the other options, a yield fee would use an existing process to collect the fee, thereby saving the administrative costs to set up a totally new collection process.

In 1999, Assembly Member Keely introduced AB 748 which would have required the State Board of Forestry and Fire Protection to adopt regulations establishing a reasonable THP filing fee not to exceed \$1,000 per THP filed. The money deposited would have been allocated annually, upon appropriation, to CDF and other agencies participating in THP review. That bill died on the Assembly Floor.

Similar legislation, AB 1172 (Keeley), was introduced in 2002 to enact a fee on timber yield to cover state agency costs for THP review and enforcement. That bill would have imposed a timber yield fee upon timber that is harvested subject to that act to be paid by any person or entity that harvests timber or causes it to be harvested, every owner of felled or downed timber who acquires title to the felled or downed timber from an exempt person or agency, or any person or entity who, without authorization, intentionally or unintentionally harvests, or causes to be harvested, timber owned by another. Assembly Bill 1172 failed passage out of the Senate Natural Resources and Wildlife Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to reevaluate financing of the THP review process that currently draws from the General Fund. In addition, this bill is intended to fund grants to local agencies to cover the cost of wildland fire suppression, improve forest health, and protection of homes and communities.
2. **Summary of amendments.** The **introduced version** of this bill would have imposed an excise tax of one cent per board foot on consumers of timber products. **April 7, 2003** amendments removed the excise tax provisions and instead imposed a sales tax of one-half percent on the retail sale of timber products. Additional amendments added definitions of key terms, provided that the retailer may retain three percent of the fee to cover costs of administration, and provided additional criteria for how the funds may be expended. **April 29, 2003** amendments removed the sales tax on timber products, and instead imposed an excise tax of one cent per board foot on consumers of timber products. **May 5, 2003** amendments added definitions of key terms and added provisions that would require the Board to prescribe by regulation a method by which a timber product supplier shall provide to a consumer the board foot content or board foot equivalent content for each product sold by that timber product supplier. **January 7, 2004** amendments removed all provisions imposing a tax and inserted provisions requiring the Legislative Analyst Office to report on and recommend options for collecting a fee imposed on consumers of timber products. **June 15, 2004** amendments removed the Legislative Analyst Office report requirements and inserted provisions imposing an excise tax on distributors or purchasers of timber products at a rate of two-cents per board foot. **June 23, 2004** amendments made minor changes to definitions of key terms. **June 30, 2004** amendments made technical changes to definitions of key terms as recommended by Board staff and changed the start-date of the proposed tax program to July 1, 2005. **July 28, 2004** amendments changed the excise tax rate from two-cents per board foot to one-cent per board foot.
3. **Bill could set precedents.** Imposing varying taxes or fees on specific commodities complicates tax administration and could set a precedent for establishing multiple taxes or fees on other classes of tangible personal property. This results in increasing administrative costs to the Board and an increased record-keeping burden on taxpayers.

4. **Suggested technical amendment.** As currently written, the definition of “timber product” does not include a product sold at wholesale or at retail that requires no further manufacturing. The definition is intended to exclude items manufactured out of wood, such as furniture, from being subject to the tax. The tax on manufactured items would be paid when the manufacturer acquires the wood to be incorporated into the manufactured item. However, the current language could be construed to exclude all timber products, not just manufactured items. It is suggested that the above definition be replaced with the following:

The term “timber product” does not include any item that has been manufactured out of wood, including, but not limited to, furniture, prefabricated trusses, craft items, toys, or any other item that is easily identifiable as a manufactured item.

5. **The tax on out-of-state timber purchases should not be problematic.** Imposing a new tax on the sale of timber products should not lead to a trend of consumers purchasing their timber products from out-of-state retailers in an attempt to avoid the timber products tax imposed on California retailers. Timber products are not conducive to Internet or mail order shopping. Therefore, such products are purchased from brick and mortar locations. So it seems reasonable to assume that out-of-state purchases of timber products would likely be limited to consumers along California’s borders who already purchase timber products at such locations.

The amount of the tax is also low enough to not provoke consumers to purchase their timber products from out-of-state. According to the author, a typical new house uses about 10,000 board feet of lumber, equivalent to a tax of approximately \$100. Since the tax is reasonably low, it is unlikely that it would change a consumer’s purchasing behavior. Having timber products delivered from out-of-state or traveling out-of-state to purchase such products would not seem to be cost effective alternatives.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new tax program. These costs would include registering taxpayers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. Board staff estimates the costs associated with the start-up and ongoing administration of this tax program would be as follows:

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Personal Services	\$ 1,100,000	\$ 2,725,000	\$ 3,180,000	\$ 3,161,000
Operating Equipment and Expense	1,181,000	791,000	691,000	599,000
Total	\$ 2,281,000	\$ 3,516,000	\$ 3,871,000	\$ 3,760,000

REVENUE ESTIMATE**Background, Methodology, and Assumptions**

The Western Wood Products Association, the trade association which represents lumber manufacturers in 12 Western states and Alaska, estimates that U.S. lumber consumption in 2004 should reach 55.7 billion board feet. Based on California's population, it is estimated that 6.7 billion board feet would be consumed in this state ($12\% \times 55.7$ billion board feet = 6.7 billion).

The bill would impose an excise tax on a distributor for the privilege of distributing timber products in the amount of \$0.01 per board foot of lumber or board foot equivalent. In 2004, this would generate an estimated revenue of \$67 million ($\0.01×6.7 billion board feet = \$67 million).

Revenue Summary

This bill would generate about \$67 million annually for the Timber Harvest Review, Fire Protection and Forest Restoration Account. Additionally, assuming this tax would be passed on to consumers, the additional sales and use tax revenue is estimated as follows:

	(millions)
Excise Tax Revenue	\$67.0
Sales & Use Tax Revenue	
State (5.25%)	3.5
Local (2.0%)	1.3
District (0.67%)	<u>0.5</u>
Sub-Total – Sales & Use Tax	<u>5.3</u>
Total Revenue	<u><u>\$72.3</u></u>

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